IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

MISCELLANEOUS PETITION NO.10 OF 2006

Shri.Subir Nidhir Datta. ... Petitioner

vs.

Shri.Samir Nidhir Datta & Another. ... Respondents.

Mr.Rahul Rao with Vijay Pande i/b. I.V.Rao, for Petitioner.

Mr.A.Y.Sakhare i/b. P.J.Coutinho, for Respondent no.1.

CORAM: D.K.DESHMUKH,J.

DATED: 22nd September,2006

P.C.:-

1. This petition has been filed for revocation of probate of the Will of the deceased Mr.Nidhir Kalimohan Datta who expired on 26.12.2002. The probate has been granted by this Court by order dated 10.3.2005. According to the petitioner, the only ground on which the order for revocation of probate is sought is that though it is required by Rule 399 of the Rules framed by this Court to serve the notice of the probate petition personally, the notice of the probate petition was not served on the petitioner personally. The petitioner is

son of the deceased. The petition for probate was filed by the other son of the deceased. Admitted position is that much before the probate was granted, on 31.8.2004 the petitioner had filed a caveat in the probate petition. Though the caveat mentioned wrong provision of Law viz. Section 148-A of Civil Procedure Code, it appears that the office of this Court treated that as a Caveat in the probate petition. It further appears that Advocate Mr.B.Unnikrishnan had filed vakalatnama on behalf of the petitioner. As the petitioner did not file affidavit in support of the caveat which is required to be filed in accordance with the rules, the present respondent no.1 who was the petitioner in the probate petition took out chamber summons no.16 of 2005 for removal of the caveat because affidavit in support of that caveat was not filed. It appears that the chamber summons, according to the record, was served on the Advocate for Caveator Mr.Unnikrishnan. Ultimately that chamber summons was granted. In the absence of affidavit filed in support of the caveat, the caveat was removed and the probate of the Will was granted.

2. The petitioner in this petition has made allegations against his lawyer Mr.Unnikrishnan. However, neither Mr.Unnikrishnan is joined as party to this petition nor notice of this petition has been given to him. Obviously therefore, the Court cannot make inquiry into the aspect whether the allegations made against the Advocate are false or not. If these allegations made against the Advocate who was appearing for petitioner are ignored, then the facts as they remain are that though the petitioner was not served personally with the

notice of the petition, much before the petition was granted the petitioner appeared and had filed his caveat but did not file affidavit in support of caveat. Thereafter, the respondent no.1 took out a chamber summons for removal of the caveat. That chamber summons was duly served on the advocate for petitioner. In these circumstances therefore, in my opinion, there is no reason to revoke the probate. The petition is therefore, disposed of. Petitioner is directed to pay cost of this petition to the respondents as incurred by the respondents.